

106TH CONGRESS  
1ST SESSION

# S. 731

To provide for substantial reductions in the price of prescription drugs for  
medicare beneficiaries.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. KENNEDY (for himself, Mr. JOHNSON, Mr. LEAHY, Mr. WELLSTONE, Mr.  
FEINGOLD, Mr. INOUE, Mr. KERRY, and Mr. DODD) introduced the fol-  
lowing bill; which was read twice and referred to the Committee on Fi-  
nance

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## A BILL

To provide for substantial reductions in the price of  
prescription drugs for medicare beneficiaries.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Prescription Drug  
5       Fairness for Seniors Act of 1999”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds the following:

8               (1) Manufacturers of prescription drugs engage  
9       in price discrimination practices that compel many

1       older Americans to pay substantially more for pre-  
2       scription drugs than the drug manufacturers' most  
3       favored customers, such as health insurers, health  
4       maintenance organizations, and the Federal Govern-  
5       ment.

6               (2) On average, older Americans who buy their  
7       own prescription drugs pay twice as much for pre-  
8       scription drugs as the drug manufacturers' most fa-  
9       vored customers. In some cases, older Americans pay  
10      over 15 times more for prescription drugs than the  
11      most favored customers.

12             (3) The discriminatory pricing by major drug  
13      manufacturers sustains their annual profits of  
14      \$20,000,000,000, but causes financial hardship and  
15      impairs the health and well-being of millions of older  
16      Americans. More than 1 in 8 older Americans are  
17      forced to choose between buying their food and buy-  
18      ing their medicines.

19             (4) Most federally funded health care programs,  
20      including medicaid, the Veterans Health Administra-  
21      tion, the Public Health Service, and the Indian  
22      Health Service, obtain prescription drugs for their  
23      beneficiaries at low prices. Medicare beneficiaries are  
24      denied this benefit and cannot obtain their prescrip-

1       tion drugs at the favorable prices available to other  
2       federally funded health care programs.

3           (5) Implementation of the policy set forth in  
4       this Act is estimated to reduce prescription drug  
5       prices for medicare beneficiaries by more than 40  
6       percent.

7           (6) In addition to substantially lowering the  
8       costs of prescription drugs for older Americans, im-  
9       plementation of the policy set forth in this Act will  
10      significantly improve the health and well-being of  
11      older Americans and lower the costs to the Federal  
12      taxpayer of the medicare program.

13          (7) Older Americans who are terminally ill and  
14      receiving hospice care services represent some of the  
15      most vulnerable individuals in our Nation. Making  
16      prescription drugs available to medicare beneficiaries  
17      under the care of medicare-certified hospices will as-  
18      sist in extending the benefits of lower prescription  
19      drug prices to those most vulnerable and in need.

20          (b) PURPOSE.—The purpose of this Act is to protect  
21      medicare beneficiaries from discriminatory pricing by drug  
22      manufacturers and to make prescription drugs available  
23      to medicare beneficiaries at substantially reduced prices.

1 **SEC. 3. PARTICIPATING MANUFACTURERS.**

2 (a) IN GENERAL.—Each participating manufacturer  
3 of a covered outpatient drug shall make available for pur-  
4 chase by each pharmacy such covered outpatient drug in  
5 the amount described in subsection (b) at the price de-  
6 scribed in subsection (c).

7 (b) DESCRIPTION OF AMOUNT OF DRUGS.—The  
8 amount of a covered outpatient drug that a participating  
9 manufacturer shall make available for purchase by a phar-  
10 macy is an amount equal to the aggregate amount of the  
11 covered outpatient drug sold or distributed by the phar-  
12 macy to medicare beneficiaries.

13 (c) DESCRIPTION OF PRICE.—The price at which a  
14 participating manufacturer shall make a covered out-  
15 patient drug available for purchase by a pharmacy is the  
16 price equal to the lower of the following:

17 (1) The lowest price paid for the covered out-  
18 patient drug by any agency or department of the  
19 United States.

20 (2) The manufacturer's best price for the cov-  
21 ered outpatient drug, as defined in section  
22 1927(c)(1)(C) of the Social Security Act (42 U.S.C.  
23 1396r-8(c)(1)(C)).

1 **SEC. 4. SPECIAL PROVISION WITH RESPECT TO HOSPICE**  
2 **PROGRAMS.**

3 For purposes of determining the amount of a covered  
4 outpatient drug that a participating manufacturer shall  
5 make available for purchase by a pharmacy under section  
6 3, there shall be included in the calculation of such  
7 amount the amount of the covered outpatient drug sold  
8 or distributed by a pharmacy to a hospice program. In  
9 calculating such amount, only amounts of the covered out-  
10 patient drug furnished to a medicare beneficiary enrolled  
11 in the hospice program shall be included.

12 **SEC. 5. ADMINISTRATION.**

13 The Secretary shall issue such regulations as may be  
14 necessary to implement this Act.

15 **SEC. 6. REPORTS TO CONGRESS REGARDING EFFECTIVE-**  
16 **NESS OF ACT.**

17 (a) IN GENERAL.—Not later than 2 years after the  
18 date of enactment of this Act, and annually thereafter,  
19 the Secretary shall report to Congress regarding the effec-  
20 tiveness of this Act in—

21 (1) protecting medicare beneficiaries from dis-  
22 criminatory pricing by drug manufacturers; and

23 (2) making prescription drugs available to  
24 medicare beneficiaries at substantially reduced  
25 prices.

1 (b) CONSULTATION.—In preparing such reports, the  
 2 Secretary shall consult with public health experts, affected  
 3 industries, organizations representing consumers and  
 4 older Americans, and other interested persons.

5 (c) RECOMMENDATIONS.—The Secretary shall in-  
 6 clude in such reports any recommendations that the Sec-  
 7 retary considers appropriate for changes in this Act to fur-  
 8 ther reduce the cost of covered outpatient drugs to medi-  
 9 care beneficiaries.

10 **SEC. 7. DEFINITIONS.**

11 In this Act:

12 (1) PARTICIPATING MANUFACTURER.—The  
 13 term “participating manufacturer” means any man-  
 14 ufacturer of drugs or biologicals that, on or after the  
 15 date of enactment of this Act, enters into or renews  
 16 a contract or agreement with the United States for  
 17 the sale or distribution of covered outpatient drugs  
 18 to the United States.

19 (2) COVERED OUTPATIENT DRUG.—The term  
 20 “covered outpatient drug” has the meaning given  
 21 that term in section 1927(k)(2) of the Social Secu-  
 22 rity Act (42 U.S.C. 1396r–8(k)(2)).

23 (3) MEDICARE BENEFICIARY.—The term  
 24 “medicare beneficiary” means an individual entitled  
 25 to benefits under part A of title XVIII of the Social

1 Security Act or enrolled under part B of such title,  
2 or both.

3 (4) HOSPICE PROGRAM.—The term “hospice  
4 program” has the meaning given that term under  
5 section 1861(dd)(2) of the Social Security Act (42  
6 U.S.C. 1395x(dd)(2)).

7 (5) SECRETARY.—The term “Secretary” means  
8 the Secretary of Health and Human Services.

9 **SEC. 8. EFFECTIVE DATE.**

10 The Secretary shall implement this Act as expedi-  
11 tiously as practicable and in a manner consistent with the  
12 obligations of the United States.

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